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10 Attorneys for Defendant

11 WELLS FARGO AUTO FINANCE, INC.

12
13 UNITED STATES DISTRICT COURT

14 SOUTHERN DISTRICT OF CALIFORNIA

15 DANNY ALLEN, JR., Individually and on
Behalf of All Others Similarly Situated,

16 Plaintiffs,

17 vs.

18 WELLS FARGO AUTO FINANCE, INC.,

19 Defendant.

Case No.: 3:10-cv-02657-W-JMA

Hon. Thomas J. Whelan

Ctrm. 7

17 **- CLASS ACTION -**

18 **DEFENDANT WELLS FARGO AUTO**
19 **FINANCE, INC.'S ANSWER TO**
20 **PLAINTIFF'S CLASS ACTION**
21 **COMPLAINT**

22 Complaint Filed: December 23, 2010

1 Defendant WELLS FARGO AUTO FINANCE, INC., ("Defendant") hereby answers the
2 Class Action Complaint filed on December 23, 2010 (the "Complaint") by Plaintiff Danny Allen,
3 Jr. ("Plaintiff"), as follows:

4 1. Answering Paragraph 1 of the Complaint, Defendant admits that Plaintiff purports
5 to assert claims for alleged violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227
6 (the "TCPA"). Except as expressly admitted, Defendant denies each and every other allegation
7 set forth therein.

8 2. Answering Paragraph 2 of the Complaint, Defendant admits that this Court has
9 jurisdiction over this action pursuant to 28 U.S.C. § 1332(d). Except as expressly admitted,
10 Defendant denies each and every other allegation set forth therein.

11 3. Answering Paragraph 3 of the Complaint, Defendant consents to jurisdiction and
12 venue in this Court. Except as expressly admitted, Defendant denies each and every other
13 allegation set forth therein.

14 4. Answering Paragraph 4 of the Complaint, Defendant is without sufficient
15 knowledge or information to form a belief as to the truth of the allegations, and on that basis
16 denies each and every allegation set forth therein.

17 5. Answering Paragraph 5 of the Complaint, Defendant denies each and every
18 allegation set forth therein.

19 6. Answering Paragraph 6 of the Complaint, Defendant is without sufficient
20 knowledge or information to form a belief as to the truth of the allegations, and on that basis
21 denies each and every allegation set forth therein.

22 7. Answering Paragraph 7, Defendant denies each and every allegation set forth
23 therein.

24 8. Answering Paragraph 8, Defendant denies each and every allegation set forth
25 therein.

26 9. Answering Paragraph 9 of the Complaint, Defendant denies each and every
27 allegation set forth therein.

28

1 10. Answering Paragraph 10, Defendant denies each and every allegation set forth
2 therein.

3 11. Answering Paragraph 11, Defendant is without information or belief sufficient to
4 admit or deny the allegations of this paragraph and, on that basis, denies each and every
5 allegation set forth therein.

6 12. Answering Paragraph 12 of the Complaint, Defendant is without sufficient
7 knowledge or information to form a belief as to the truth of the allegations, and on that basis
8 denies each and every allegation set forth therein.

9 13. Answering Paragraph 13, Defendant denies each and every allegation set forth
10 therein.

11 14. Answering Paragraph 14 of the Complaint, Defendant is without sufficient
12 knowledge or information to form a belief as to the truth of the allegations, and on that basis
13 denies each and every allegation set forth therein.

14 15. Answering Paragraph 15 of the Complaint, Defendant denies each and every
15 allegation set forth therein.

16 16. Answering Paragraph 16 of the Complaint, Defendant denies each and every
17 allegation set forth therein.

18 17. Answering Paragraph 17 of the Complaint, Defendant denies each and every
19 allegation set forth therein.

20 18. Answering Paragraph 18 of the Complaint, Defendant admits that it received a
21 correspondence from Plaintiff on the date stated but denies each and every allegation set forth
22 therein.

23 19. Answering Paragraph 19 of the Complaint, Defendant denies each and every
24 allegation set forth therein.

25 20. Answering Paragraph 20 of the Complaint, Defendant denies each and every
26 allegation set forth therein.

27 21. Answering Paragraph 21 of the Complaint, Defendant denies each and every
28 allegation set forth therein.

1 22. Answering Paragraph 22 of the Complaint, Defendant denies each and every
2 allegation set forth therein.

3 23. Answering Paragraph 23 of the Complaint, Defendant denies each and every
4 allegation set forth therein.

5 24. Answering Paragraph 20(2) of the Complaint, Defendant admits that Plaintiff
6 purports to represent other class members, but denies each and every allegation set forth therein.

7 25. Answering Paragraph 21(2) of the Complaint, Defendant denies each and every
8 allegation set forth therein.

9 26. Answering Paragraph 22(2) of the Complaint, Defendant denies each and every
10 allegation set forth therein.

11 27. Answering Paragraph 23(2) of the Complaint, Defendant denies each and every
12 allegation set forth therein.

13 28. Answering Paragraph 24 of the Complaint, Defendant denies each and every
14 allegation set forth therein.

15 29. Answering Paragraph 25 of the Complaint, Defendant denies each and every
16 allegation set forth therein.

17 30. Answering Paragraph 26 of the Complaint, Defendant denies each and every
18 allegation set forth therein.

19 31. Answering Paragraph 27 of the Complaint, Defendant denies each and every
20 allegation set forth therein.

21 32. Answering Paragraph 28 of the Complaint, Defendant denies each and every
22 allegation set forth therein.

23 33. Answering Paragraph 29 of the Complaint, Defendant denies each and every
24 allegation set forth therein.

25 34. Answering Paragraph 30 of the Complaint, Defendant incorporates all of the
26 preceding Paragraphs of this Answer as if fully set forth herein.

27 35. Answering Paragraph 31 of the Complaint, Defendant denies each and every
28 allegation set forth therein.

1 36. Answering Paragraph 32 of the Complaint, Defendant incorporates all of the
2 preceding Paragraphs of this Answer as if fully set forth herein.

3 37. Answering Paragraph 33 of the Complaint, Defendant incorporates all of the
4 preceding Paragraphs of this Answer as if fully set forth herein.

5 38. Answering Paragraph 34 of the Complaint, Defendant denies each and every
6 allegation set forth therein.

7 39. Answering Paragraph 35 of the Complaint, Defendant denies each and every
8 allegation set forth therein.

9 40. Answering Paragraph 36 of the Complaint, Defendant incorporates all of the
10 preceding Paragraphs of this Answer as if fully set forth herein.

11 41. Answering Paragraph 37 of the Complaint, Defendant incorporates all of the
12 preceding Paragraphs of this Answer as if fully set forth herein.

13 42. Answering Paragraph 38 of the Complaint, Defendant denies each and every
14 allegation set forth therein.

15 43. Answering Paragraph 39 of the Complaint, Defendant denies each and every
16 allegation set forth therein.

17 **AFFIRMATIVE DEFENSES**

18 Without assuming the burden of proof where it otherwise lies with Plaintiff, Defendant
19 asserts the following further and affirmative defenses:

20 **FIRST AFFIRMATIVE DEFENSE**

21 **(Failure To State A Claim)**

22 The Complaint fails to state a claim upon which relief can be granted.

23 **SECOND AFFIRMATIVE DEFENSE**

24 **(Lack of Standing)**

25 Plaintiff lacks standing to sue Defendant, and to represent any supposed class members on
26 any claim against Defendant.

THIRD AFFIRMATIVE DEFENSE

(Procedural and Substantive Due Process Rights)

The imposition of statutory damages under the TCPA against Defendant would violate the due process provisions of the United States Constitution and/or the California State Constitution.

FOURTH AFFIRMATIVE DEFENSE

(Excessive Fines)

The award of statutory penalties against Defendants would violate the prohibition against excessive fines of the United States Constitution.

FIFTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

Applicable statutes of limitations, including, without limitation, 28 U.S.C. § 1658, bar the claims of Plaintiff, or any persons he purports to represent.

SIXTH AFFIRMATIVE DEFENSE

(Arbitration Provision/Class Waiver)

Plaintiff has waived his right to act as a representative for the purported class and his claim is governed by an arbitration agreement compelling Plaintiff to arbitrate this dispute, as an individual and not on a class basis.

SEVENTH AFFIRMATIVE DEFENSE

(Consent)

Plaintiff is barred, in whole or in part, from maintaining his alleged causes of action because he consented to receive calls of the type he alleges that Defendant caused to be sent to him.

EIGHTH AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

NINTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiff's claims are barred in whole or in part by the doctrine of waiver.

TENTH AFFIRMATIVE DEFENSE

(Laches)

Plaintiff is barred from recovery by the doctrine of laches because Plaintiff, and/or class members, knew of the purported acts or omissions he ascribes to Defendant and was fully aware of his rights against Defendant (if any) but nevertheless inexcusably and unreasonably delayed in asserting those rights to the prejudice of Defendants.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiff's claims are barred in whole or in part as a result of his failure to mitigate his alleged damages, if any.

TWELFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiff is precluded from any recovery from Defendant, or any such recovery must be reduced, as a result of Plaintiff's failure to do equity in the matters alleged in the Complaint.

THIRTEENTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

Defendant expressly reserve the right to assert such other and further affirmative defenses as may be appropriate.

PRAYER

WHEREFORE, Defendant requests the following relief:

- (1) That Plaintiff's Complaint be dismissed with prejudice;
- (2) That Plaintiff takes nothing by virtue of the Complaint;
- (3) That Judgment be entered in Defendant's favor;
- (4) That the Court award Defendant its fees, expenses and costs to the full extent

permitted by law; and

- (5) That the Court award such other relief as is just and proper under the circumstances.

DATED: February 22, 2011

SEVERSON & WERSON
A Professional Corporation

By: /s/ Eric J. Troutman
ERIC J. TROUTMAN
Attorneys for Defendant
WELLS FARGO AUTO FINANCE, INC.

CERTIFICATE OF SERVICE

I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I am employed in the City of Irvine, California; my business address is Severson & Werson, The Atrium, 19100 Von Karman Ave., Suite 700, Irvine, CA 92612.

On the date below I served a copy, with all exhibits, of the following document(s):

DEFENDANT WELLS FARGO AUTO FINANCE, INC.'S ANSWER TO PLAINTIFF'S CLASS ACTION COMPLAINT

on all interested parties in said case addressed as follows:

Joshua B. Swigart, Esq.
Robert L. Hyde, Esq.
HYDE & SWIGART
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San Diego, CA 92108-3551

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Attorneys for Plaintiff
DANNY ALLEN, JR.
Telephone: (800) 400-6808
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☒ **(BY MAIL)** By placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in Irvine, California in sealed envelopes with postage fully prepaid.

☐ **(BY HAND)** By placing the documents in an envelope or package addressed to the persons listed above and providing them to a professional messenger service for delivery.

☐ **(BY FEDERAL EXPRESS)** By depositing copies of the above documents in a box or other facility regularly maintained by Federal Express with delivery fees paid or provided for.

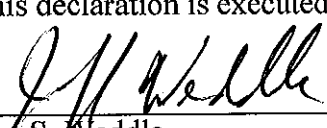
☐ **(BY EXPRESS MAIL)** By placing the above documents in the United States mail for Express Mail delivery at The Atrium, 19100 Von Karman Ave., Suite 700, Irvine, CA 92612, in a sealed envelope addressed as above, with Express Mail postage thereon fully prepaid.

☐ **(BY FAX)** By use of facsimile machine telephone number (949) 442-7118, I faxed a true copy to the addressee(s) listed above at the facsimile number(s) noted after the party's address. The transmission was reported as complete and without error.

☒ **(BY ELECTRONIC SERVICE)** Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF system sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's EC/ECF system.

☐ **(BY ELECTRONIC TRANSMISSION)** By sending a file of the above documents(s) via electronic transmission (e-mail) at _____ am./pm. using e-mail address (_____@severson.com) to the e-mail address designed for each party identified above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. This declaration is executed in Irvine, California, on February 23, 2011.


Jeffrey S. Weddle